IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 6971 of 2007

(CRIME NO. 277/2007 OF ERUMAPETTY POLICE STATION (THRISSUR DIST.)

APPLICANT/ACCUSED:

M.O. SUNNY, S/O. M.T. OUSEPH,
MURINGATHERY HOUSE, ERUMAPETTY DESOM,
ERUMAPETTY POST, KARIYANNUR VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.K.A.SATHEESA BABU

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6971 of 2007

Dated this the 21st day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime which was initially registered under Sections 341, 336 and 294(b) I.P.C. In the course of investigation, allegation under Section 498A I.P.C has also been included. The crux of the allegations is that the petitioner was guilty of matrimonial cruelty of the culpable variety against his wife. He had allegedly, on account of quarrels and disputes, attempted to assault her and push her face into a pot of boiling water. She suffered burn injuries. She was taken to the hospital. Crime was registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the relationship between the petitioner and the de facto complainant is not one of husband and wife. Their relationship is one of employer and employee in a cloth shop run by the petitioner. There has been disputes between them. The petitioner had earlier gone to the court with a civil dispute. As a retaliation, the present false allegations are being raised.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that as per a registered agreement executed on 22/1/1999, the petitioner and the de facto complainant had entered matrimony and that the alleged cruel acts were committed in the course of such matrimony.

4. The learned counsel for the petitioner contends that there is no legal and valid matrimony. The learned Public Prosecutor relies on the decision in Reema Aggarwal v. Anupam [2004(2) KLT 822(SC)] in support of the contention that the meticulous details about the validity of the marriage need not be considered at this stage in proceedings under Section 498A I.P.C.

5. The learned counsel for the petitioner further submits that the alleged injuries were not suffered by her in the circumstances alleged by her and that even earlier the petitioner had filed civil suit against the de facto complainant.

6. I have considered all the relevant inputs. I shall not embark on a detailed discussion about the acceptability of the allegations raised or the credibility of the data collected. Suffice

it to say that I have seen the copy of the registered agreement of marriage which is available in the case diary. I have also perused the nature of allegations raised in the F.I statement as also the injuries described in the wound certificate and the allegations promptly made to the doctor. I need only mention that I do not find any features in this case that would justify the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

7. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007